IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

CRL.A.No. 550 of 2002()

SC.330/2000 of ADDL.SESSIONS COURT (ADHOC), KOTTAYAM
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APPELLANT: APPELLANT/ACCUSED:

SASI, S/O. KUNJUNNI,
KATTILACKAL HOUSE, PARIPPU KARA,
AYMANAM VILLAGE.

BY ADV. SRI.V.K.SUNIL
SRI.AJEY THOMAS

RESPONDENTS: RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
EXCISE INSPECTOR, ETTUMANOOR EXCISE RANGE,
(REPRESENTED BY PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM.)

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO. 550 OF 2002

DATED THIS THE 5th September 2007

JUDGMENT

The appellant is the accused in S.C.No.330/2000 who stands convicted for the offence under Section 58 of the Abkari Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of R.1,00,000/- and in default to undergo simple imprisonment for two months.

2. The prosecution case is that the accused was found in possession of 700 ml. of illicit liquor along with an empty bottle and glass at the foot of a coconut tree adjacent to his house with door No.IV/521 of Aymanam Panchayat on 6-10-1999 at about 12.30 p.m. On sighting the excise party he took to his heels from the spot.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 8, Exts.P1 to P6 and Mos. 1 to 3. PW1 is the Preventive Officer and PW2 is the Circle Inspector of the Excise Squad that was scouting the area that detected the

offence. Pws.3 & 8 are the independent witnesses to the seizure mahazar who only admitted the signatures in the mahazar but denied the recovery at the spot. They were not treated as hostile. PW5 is the Panchayat Secretary who has proved Ext.P5 certificate that would show that the concerned house is owned by the accused. Ext.P6 is the certificate of chemical analysis which was proved by PW6, the investigating officer, which would show that the sample contained 28.04% of ethyl alcohol. The defence case is one of total denial. According to the defence, the accused is an autorikshaw driver and he has nothing to do with the incident.

4. Pws.1 and 2, the Preventive Officer and the Circle Inspector of Excise respectively have testified as to the incident. I find that the evidence of Pws.1 and 2 tallies on all material particulars. The only contradiction pointed out is that while PW2 has stated that the wife of the accused is present in the house, it was brought out from PW1 that nobody was in the house. In view of the fact with respect to the particulars of the incident, the evidence of Pws.1 and 2 stands corroborated, the above

discrepancy is not that of a serious nature that discredit the version of Pws.1 and 2. The version of Pws.1 and 2 also tallies with the recitals in Ext.P1 mahazar which has been proved by Pws.1 and 2. In the circumstances, I find no reason to deviate from the findings of the trial court. The conviction is confirmed.

Counsel for the appellant has pleaded for leniency pointing out that the accused has no antecedents and that the entire family is depending on his income as he is an autorikshaw driver. It is also contended that the accused was facing the ordeal of criminal proceedings so far. It is also pointed out that the quantity involved is only 700 ml. In the circumstances, the sentence is modified to undergo simple imprisonment for three months and to pay a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for six months. The appeal is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A.NO. 550 OF 2002
JUDGMENT

5-9-2007